# News Release

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## Labor Department Sues Florida Insurer And Plan Trustee For Mismanagement of Pension Assets

**ATLANTA** – The Gary M. Hochberg CLU Insurance Agency of Hollywood, Fla., and the trustee of its defined benefit plan were sued by the U.S. Department of Labor on Oct. 7, 2003, for self-dealing and mismanaging the plan.

Gary M. Hochberg is the plan's trustee, sole owner, director and officer of the insurance agency. The suit alleges Hochberg failed to account for plan contributions, plan investment earnings and losses and plan expenses as early as 1992. He also failed to maintain and account for funds in the auxiliary investment fund, to monitor the fair market value of plan assets, excluded eligible employees from coverage by the plan and failed to pay or underpaid benefits to some participants. In 1999, the defendant paid some retirees benefits at 26.952 percent of annual salary even though the plan benefit formula provided for payments to participants at 76.94 of annual salary.

Hochberg also allegedly transferred $27,500 in plan assets to himself in 1994 and $27,620 to Designer Wear, Inc. (DWI) in 1994 and 1996. These loans or extensions of credit, which remain unpaid to date, are considered prohibited transactions in violation of the Employee Retirement Income Security Act (ERISA).

The plan is a defined benefit plan funded by the company with universal life insurance policies, annuities and an auxiliary investment fund, which is managed and invested solely by Hochberg. The plan provides for the payment of benefits at normal retirement, death, disability and termination of employment. The plan document also calls for appropriate records to be maintained to determine separate participant account balances and for a yearly valuation of the plan assets. According to the most recent information available to the department, the plan had three participants and assets of $49,271.

The department's suit, filed in federal district court in Ft. Lauderdale, seeks to require that Hochberg restore all losses to the plan with interest; offset his individual plan account if the losses are not otherwise restored to the plan; and permanently bar him from serving as a fiduciary to any employee benefit plan governed by ERISA. The department also seeks the appointment of an independent trustee and administrator to manage the plan, distribute its assets to participants and, if necessary, terminate the plan.

Howard Marsh, director of the Atlanta regional office of the Employee Benefits Security Administration (EBSA), which investigated the case, said, "The department took legal action to ensure that workers are paid promised benefits and to restore any assets owed to the plan so money is available to pay retirement benefits to workers in the future."

Employers and workers can contact the Atlanta office at (404) 562-2156 or EBSA's toll free number, 1-866-444-EBSA (3272), for help with any problems relating to private-sector pension and health plans.

(Chao v. Gary M. Hochberg)
Civil Action No. 03-61859